DEPARTMENT OF INSURANCE, SECURITIES, AND BANKING

NOTICE OF FINAL RULEMAKING

The Director of the Department of Insurance, Securities, and Banking, pursuant to the authority set forth under sections 102(9), 103(1), and 125 of the Insurance Trade and Economic Development Amendment Act of 2000, effective April 3, 2001 (D.C. Law 13-265; D.C. Official Code §§ 31-2231.01(9), 31-2231.03(1), and 31-2231.25 (2001)) and in accordance with section 6 of the District of Columbia Administrative Procedure Act, effective October 21, 1968, (82 Stat. 1206, Pub. L. 90-614, D.C. Official Code § 2-505(a) (2001)), hereby gives notice of the adoption of a new Chapter 52 of Title 26 of the District of Columbia Municipal Regulations (DCMR) (Insurance and Securities).

Responding to thirty (30) years of documented abuse regarding the sale of life insurance to members of the military by a very small segment of the insurance industry, Congress passed and President Bush signed on September 29, 2006, the Military Personnel Financial Services Protection Act (Pub. L. No. 109-290). Congress found it imperative that members of the United States Armed Forces be shielded from "abusive and misleading sales practices" and protected from certain life insurance products that are "improperly marketed as investment products, providing minimal death benefits in exchange for excessive premiums that are front-loaded in the first few years, making them entirely inappropriate for most military personnel." Congress required that the "States collectively work with the Secretary of Defense to ensure implementation of appropriate standards to protect members of the Armed Forces from dishonest and predatory insurance sales practices while on a military installation," and that each state report to Congress by September 29, 2007, on the progress made regarding its adoption of the standards collectively developed.

The National Association of Insurance Commissioners (NAIC) developed a model regulation to meet these dual Congressional mandates. The model makes actionable certain acts and practices which until now have not been declared to be false, misleading, deceptive or unfair under state trade practices statutes. The model also addresses Congressional concerns regarding suitability and product standards. The model makes it a deceptive or unfair trade practice to recommend the purchase of any life insurance product which includes a side fund to junior enlisted service members in pay grades E-4 and below, unless the insurer has reasonable grounds for believing that the life insurance portion of the product, standing alone, is suitable. Additionally, the model tracks or incorporates relevant Department of Defense solicitation regulations which identify sales practices directed at active duty service members.

The rulemaking will implement the District of Columbia's adoption of the standards collectively developed by the NAIC. Notice of Proposed Rulemaking was published in the *D.C. Register* on October 19, 2007, at 54 DCR 010085. No comments were received with regard to the rules and no changes have been made since publication as a Notice of Proposed Rulemaking. These final rules will be effective January 1, 2008.

26 DCMR, Chapter 52, Military Sales Practices, is adopted as follows:

CHAPTER 52 MILITARY SALES PRACTICES

Secs.

5200 PURPOSE

5200.1 The purpose of this regulation is to set forth standards to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive or unfair.

5200.2 Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation.

5201 SCOPE

5201.1 This regulation shall apply only to the solicitation or sale of any life insurance or annuity product by an insurer or insurance producer to an active duty service member of the United States Armed Forces.

5202 AUTHORITY

5202.1 This regulation is issued under the authority of the Insurance Trade and Economic Development Amendment Act of 2000, effective April 3, 2001 (D.C. Law 13-265, D.C. Official Code § 31-2231 *et seq.* (2001)).

5203 EXEMPTIONS

5203.1 This regulation shall not apply to solicitations or sales involving:

(a) Credit insurance;

(b) Group life insurance or group annuities where there is no in-person, face-to-face solicitation of individuals by an insurance producer or where the contract or certificate does not include a side fund;

(c) An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner; or, when a term conversion privilege is exercised among corporate affiliates;

(d) Individual stand-alone health policies, including disability income policies;

(e) Contracts offered by Service members' Group Life Insurance (SGLI) or Veterans' Group Life Insurance (VGLI), as authorized by 38 U.S.C. §§ 1965 *et seq.*;

(f) Life insurance contracts offered through or by a non-profit military association, qualifying under Section 501 (c) (23) of the Internal Revenue Code (IRC), and which are not underwritten by an insurer; or

(g) Contracts used to fund:

(i) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(ii) A plan described by Sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the IRC, as amended, if established or maintained by an employer;

(iii) A government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC;

(iv) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(v) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(vi) Prearranged funeral contracts.

5203.2 Nothing herein shall be construed to abrogate the ability of nonprofit organizations (and/or other organizations) to educate members of the United

States Armed Forces in accordance with Department of Defense DoD Instruction 1344.07 – PERSONAL COMMERCIAL SOLICITATION ON DOD INSTALLATIONS or successor directive.

5203.3 For purposes of this regulation, general advertisements, direct mail and internet marketing shall not constitute "solicitation." Telephone marketing shall not constitute "solicitation" provided the caller explicitly and conspicuously discloses that the product concerned is life insurance and makes no statements that avoid a clear and unequivocal statement that life insurance is the subject matter of the solicitation. Provided however, nothing in this subsection shall be construed to exempt an insurer or insurance producer from this regulation in any in-person, face-to-face meeting established as a result of the "solicitation" exemptions identified in this subsection.

5204 PRACTICES DECLARED FALSE, MISLEADING, DECEPTIVE, OR UNFAIR ON A MILITARY INSTALLATION

5204.1 The following acts or practices when committed on a military installation by an insurer or insurance producer with respect to the in-person, face-to-face solicitation of life insurance are declared to be false, misleading, deceptive or unfair:

(a) Knowingly soliciting the purchase of any life insurance product "door to door" or without first establishing a specific appointment for each meeting with the prospective purchaser.

(b) Soliciting service members in a group or "mass" audience or in a "captive" audience where attendance is not voluntary.

(c) Knowingly making appointments with or soliciting service members during their normally scheduled duty hours.

(d) Making appointments with or soliciting service members in barracks, day rooms, unit areas, or transient personnel housing or other areas where the installation commander has prohibited solicitation.

(e) Soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander's designee.

(f) Posting unauthorized bulletins, notices or advertisements.

(g) Failing to present DD Form 2885, Personal Commercial Solicitation Evaluation, to service members solicited or encouraging service members solicited not to complete or submit a DD Form 2885.

(h) Knowingly accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the United States Armed Forces without first obtaining for the insurer's files a completed copy of any required form which confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of life insurance established by regulations, directives or rules of the DoD or any branch of the Armed Forces.

5204.2 The following acts or practices when committed on a military installation by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair:

(a) Using DoD personnel, directly or indirectly, as a representative or agent in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members.

(b) Using an insurance producer to participate in any United States Armed Forces sponsored education or orientation program.

5205 PRACTICES DECLARED FALSE, MISLEADING, DECEPTIVE, OR UNFAIR REGARDLESS OF LOCATION

5205.1 The following acts or practices by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair:

(a) Submitting, processing or assisting in the submission or processing of any allotment form or similar device used by the United States Armed Forces to direct a service member's pay to a third party for the purchase of life insurance. The foregoing includes, but is not limited to, using or assisting in using a service member's "MyPay" account or other similar internet or electronic medium for such purposes. This subsection does not prohibit assisting a service member by providing insurer or premium information necessary to complete any allotment form.

(b) Knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship. For purposes of this section, a formal banking relationship is established when the depository institution:

(1) provides the service member a deposit agreement and periodic statements and makes the disclosures required by the Truth in Savings Act, 12 U.S.C. §§ 4301 *et seq.* and the regulations promulgated thereunder; and

(2) permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums.

(c) Employing any device or method or entering into any agreement whereby funds received from a service member by allotment for the payment of insurance premiums are identified on the service member's Leave and Earnings Statement or equivalent or successor form as "Savings" or "Checking" and where the service member has no formal banking relationship as defined in subsection 7 (A)(2).

(d) Entering into any agreement with a depository institution for the purpose of receiving funds from a service member whereby the depository institution, with or without compensation, agrees to accept direct deposits from a service member with whom it has no formal banking relationship.

(e) Using DoD personnel, directly or indirectly, as a representative or agent in any official or unofficial capacity with or without compensation with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade, or to the family members of such personnel.

(f) Offering or giving anything of value, directly or indirectly, to DoD personnel to procure their assistance in encouraging, assisting or facilitating the solicitation or sale of life insurance to another service member.

(g) Knowingly offering or giving anything of value to a service member with a pay grade of E-4 or below for his or her attendance to any event where an application for life insurance is solicited.

(h) Advising a service member with a pay grade of E-4 or below to change his or her income tax withholding or State of legal residence for the sole purpose of increasing disposable income to purchase life insurance.

5205.2 The following acts or practices by an insurer or insurance producer lead to confusion regarding source, sponsorship, approval or affiliation and are declared to be false, misleading, deceptive or unfair:

(a) Making any representation, or using any device, title, descriptive name or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance producer or product offered is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, the United States Armed Forces, or any state or federal agency or government entity. Examples of prohibited insurance producer titles include, but are not limited to, "Battalion Insurance Counselor," "Unit Insurance Advisor,"

"Servicemen's Group Life Insurance Conversion Consultant" or "Veteran's Benefits Counselor."

Nothing herein shall be construed to prohibit a person from using a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an accredited institution of higher learning. Such designations include, but are not limited to, Chartered Life Underwriter (CLU), Chartered Financial Consultant (ChFC), Certified Financial Planner (CFP), Master of Science In Financial Services (MSFS), or Masters of Science Financial Planning (MS).

(b) Soliciting the purchase of any life insurance product through the use of or in conjunction with any third party organization that promotes the welfare of or assists members of the United States Armed Forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that either the insurer, insurance producer or insurance product is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, or the United States Armed Forces.

5205.3 The following acts or practices by an insurer or insurance producer lead to confusion regarding premiums, costs or investment returns and are declared to be false, misleading, deceptive or unfair:

(a) Using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid.

(b) Excluding individually issued annuities, misrepresenting the mortality costs of a life insurance product, including stating or implying that the product "costs nothing" or is "free."

5205.4 The following acts or practices by an insurer or insurance producer regarding SGLI or VGLI are declared to be false, misleading, deceptive or unfair:

(a) Making any representation regarding the availability, suitability, amount, cost, exclusions or limitations to coverage provided to a service member or dependents by SGLI or VGLI, which is false, misleading or deceptive.

(b) Making any representation regarding conversion requirements, including the costs of coverage, or exclusions or limitations to coverage of SGLI or VGLI to private insurers which is false, misleading or deceptive.

(c) Suggesting, recommending or encouraging a service member to cancel or terminate his or her SGLI policy or issuing a life insurance policy which

replaces an existing SGLI policy unless the replacement shall take effect upon or after the service member's separation from the United States Armed Forces.

5205.5 The following acts or practices by an insurer and or insurance producer regarding disclosure are declared to be false, misleading, deceptive or unfair:

(a) Deploying, using or contracting for any lead generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be contacted by an insurance producer, if that is the case, for the purpose of soliciting the purchase of life insurance.

(b) Failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser.

(c) Excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance.

(d) Failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required by Section 10 of the "Military Personnel Financial Services Protection Act," Pub. L. No. 109-290, p.16.

(e) Excluding individually issued annuities, when the sale is conducted in-person face-to-face with an individual known to be a service member, failing to provide the applicant at the time the application is taken:

(1) an explanation of any free look period with instructions on how to cancel if a policy is issued; and

(2) either a copy of the application or a written disclosure. The copy of the application or the written disclosure shall clearly and concisely set out the type of life insurance, the death benefit applied for and its expected first year cost. A basic illustration that meets the requirements of [insert reference to state's illustration or disclosure regulation] shall be deemed sufficient to meet this requirement for a written disclosure.

5205.6 The following acts or practices by an insurer or insurance producer with respect to the sale of certain life insurance products are declared to be false, misleading, deceptive or unfair:

(a) Excluding individually issued annuities, recommending the purchase of any life insurance product which includes a side fund to a service member

in pay grades E-4 and below unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable.

(b) Offering for sale or selling a life insurance product which includes a side fund to a service member in pay grades E-4 and below who is currently enrolled in SGLI, is presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance.

(1) "Insurable needs" are the risks associated with premature death taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate and/or survivors or dependents.

(2) "Other military survivor benefits" include, but are not limited to: the Death Gratuity, Funeral Reimbursement, Transition Assistance, Survivor and Dependents' Educational Assistance, Dependency and Indemnity Compensation, TRICARE Healthcare benefits, Survivor Housing Benefits and Allowances, Federal Income Tax Forgiveness, and Social Security Survivor Benefits.

(c) Excluding individually issued annuities, offering for sale or selling any life insurance contract which includes a side fund:

(1) unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;

(2) unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined product. For this disclosure, the effective rate of return will consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage. This schedule will be provided for at least each policy year from one (1) to ten (10) and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration; and

(3) which by default diverts or transfers funds accumulated in the side fund to pay, reduce or offset any premiums due.

(d) Excluding individually issued annuities, offering for sale or selling any life insurance contract which after considering all policy benefits, including but not limited to endowment, return of premium or persistency, does not comply with standard nonforfeiture law for life insurance.

(e) Selling any life insurance product to an individual known to be a service member that excludes coverage if the insured's death is related to war, declared or undeclared, or any act related to military service except for an accidental death coverage, *e.g.*, double indemnity, which may be excluded.

5206 SEVERABILITY

5206.1 If any provision of these sections or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of these sections which can be given effect without the invalid provisions or application. To this end all provisions of these sections are declared to be severable.

5207 EFFECTIVE DATE

5207.1 This regulation shall become effective January 1, 2008, and shall apply to acts or practices committed on or after the effective date.

5299 DEFINITIONS

5299.1 When used in this chapter, the following words and phrases shall have the meaning ascribed:

"Active Duty" - full-time duty in the active military service of the United States and includes members of the reserve component (National Guard and Reserve) while serving under published orders for active duty or full-time training. The term does not include members of the reserve component who are performing active duty or active duty for training under military calls or orders specifying periods of less than 31 calendar days.

"Department of Defense (DoD) Personnel" - all active duty service members and all civilian employees, including nonappropriated fund employees and special government employees, of the Department of Defense.

"Door to Door" - a solicitation or sales method whereby an insurance producer proceeds randomly or selectively from household to household without prior specific appointment.

"General Advertisement" - an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance, or the promotion of the insurer or the insurance producer.

"Insurer" - an insurance company required to be licensed under the laws of this state to provide life insurance products, including annuities.

"Insurance producer" - a person required to be licensed under the laws of this state to sell, solicit or negotiate life insurance, including annuities.

"Known" or "Knowingly" - depending on its use herein, the insurance producer or insurer had actual awareness, or in the exercise of ordinary care should have known, at the time of the act or practice complained of, that the person solicited:

(a) is a service member; or

(b) is a service member with a pay grade of E-4 or below.

"Life Insurance" - insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income and unless otherwise specifically excluded, includes individually issued annuities.

"Military Installation" - any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.

"MyPay" - a Defense Finance and Accounting Service (DFAS) web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms.

"Service Member" - any active duty officer (commissioned and warrant) or enlisted member of the United States Armed Forces.

"Side Fund" - a fund or reserve that is part of or otherwise attached to a life insurance policy (excluding individually issued annuities) by rider, endorsement or other mechanism which accumulates premium or deposits with interest or by other means. The term does not include:

(a) accumulated value or cash value or secondary guarantees provided by a universal life policy;

(b) cash values provided by a whole life policy which are subject to standard nonforfeiture law for life insurance; or

(c) a premium deposit fund which:

  (1) contains only premiums paid in advance which accumulate at interest;

  (2) imposes no penalty for withdrawal;

  (3) does not permit funding beyond future required premiums;

  (4) is not marketed or intended as an investment; and

  (5) does not carry a commission, either paid or calculated.

"Specific Appointment" - a prearranged appointment agreed upon by both parties and definite as to place and time.

"United States Armed Forces" - all components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.

DEPARTMENT OF PARKS AND RECREATION

FINAL RULEMAKING

The Director of the Department of Parks and Recreation, pursuant to the authority set forth in section 9a of the Animal Control Act of 1979, effective October 18, 1979 (D.C. Law 3-30; D.C. Official Code § 8-1808.01 (2006 Supp.), and Mayor's Order 2007-53, dated February 7, 2007, hereby gives notice of the intent to adopt, in not less than thirty (30) days from the date of publication in the D.C. Register, the following rules to amend Chapter 7 of the D.C. Municipal Regulations..

This amendment is necessary to establish rules for the creation and maintenance of off-leash areas for dogs on District parkland by the Department of Parks and Recreation, including pre-requisites for site selection, guidelines for the site selection process, the Department of Parks and Recreation responsibilities, and standard rules of operation.

Chapter 7 of Title 19 (Amusements, Parks and Recreation) (June 2001) of the District of Columbia Municipal Regulations is amended as follows:

The table of contents is amended by adding the following section headings:

730 Statement of Purpose
731 Dog Parks: General Provisions
732 Dog Parks: Application Process
733 Dog Parks: Site Guidelines and Specifications
734 Dog Parks: Complaints and Enforcement
735 Dog Parks: Operation Rules
799 Definitions

New sections numbered 730 through 735 are added to read as follows:

730 STATEMENT OF PURPOSE

730.1 The District of Columbia's Department of Parks and Recreation herein provides guidelines and rules for the application, development and operation of neighborhood fenced-in, off-leash dog parks

730.2 In October 2005, the Council of the District of Columbia unanimously passed legislation amending the Animal Control Act of 1979, effective October 18, 1979 (D.C. Law 3-30; D.C. Official Code 8-1801 et seq.)(2001) which authorized the Mayor to create fenced-in, off-leash dog parks. The Council recognized that a significant and growing portion of residents needed safe places to recreate and exercise together with their dogs. The creation of dog parks in the District of Columbia requires a certain degree of flexibility, due to the density of buildings as well as the scarcity of District-owned parkland. Successful dog parks require partnerships with the community that enhance and protect the character of the neighborhood and accommodate changing needs.

731 DOG PARKS: GENERAL PROVISIONS

731.1 The Director may establish and maintain areas on District-owned parkland designated for use as dog parks.

731.2 No person shall establish a dog park or charge a fee for use of a dog park on District-owned property without prior approval from the Department.

731.3 No person shall use a dog park for any commercial purpose, however this provision does not apply to dog walkers handling 3 or less registered dogs.

731.4 A dog park shall be open seven (7) days per week during the posted hours for any Department park, except as provided by section 731.5.

731.5 A dog park with lighting shall not remain open later than 10 p.m.

731.6 The Director shall post a notice of a planned dog park closing at each entrance not less than seven (7) days before the period of closure, stating the reasons for the closure. In the case of an emergency, the Director shall post a notice as soon as practicable, and the notice shall state that closure is for emergency reasons.

731.7 All dog parks shall be enclosed by appropriate fencing that is at least five (5) feet in height and includes a double-gated entryway area.

731.8 All handlers use dog parks at their own risk. Neither the District of Columbia or its agencies nor the sponsoring dog park group shall be liable for any injury or damage caused in the dog park.

732 DOG PARKS: APPLICATION PROCESS

732.1 Each dog park shall be sponsored by a dog park group, which shall share responsibilities with the Department for the maintenance, management and enforcement of the site. The dog park group must designate one bona fide District resident to act as primary contact with the Department.

732.2 A dog park group shall contact the Department regarding a proposed location for a dog park, and the Department shall conduct a preliminary review to determine ownership of the proposed site.

732.3 After the Department determines that the proposed dog park is available District-owned parkland, the sponsoring group must submit a formal proposal to the Department stating the reasons for establishing a dog park in the neighborhood. The application shall include letters and/or petitions of support from adjoining Advisory Neighborhood Commissions (ANCs) or other individuals and entities.

732.4 All applications for dog parks shall be noticed in the D.C. Register for a 30 day public comment period and reviewed by a standing committee appointed by the Director, the Dog Park Application Review Committee (DPARC), comprised of the following: (1) the Director or his or her designee from the Department; (2) a representative from the Department of the Environment; (3) a representative from the Department of Health/Animal Control Division; (4) a veterinarian active in canine health in the District of Columbia or a recognized canine behaviorist; (5) a representative from a recognized animal shelter or animal welfare organization located within the District of Columbia; and (6) four representatives from the community, two of whom shall be from sponsoring dog park groups of existing or potential dog parks. Non-agency members of

DPARC are appointed by the Director with input from sponsoring dog park groups. DPARC members are not paid and shall serve for two years, but may be reappointed.

732.5 The DPARC shall review and evaluate all applications and make recommendations in writing to the Director within thirty (30) days of the submission of the application. The Director shall consider the application, DPARC recommendation and comments received during the 30 day comment period and respond in writing to the applicant and appropriate ANC within thirty (30) days of receiving the recommendation.

732.6 The Department has three courses of action concerning the review and evaluation of applications It may:

(a) Accept the application as submitted;

(b) Accept the application provisionally based on modifications to be made; or

(c) Reject the proposal with a detailed explanation.

732.7 If an application is rejected, the dog park group may re-apply to mitigate any defects in the application. If the application is rejected again, the Department may provide assistance in finding suitable alternatives.

732.8 If an application is accepted, the Department and the dog park group shall enter into a Memorandum of Agreement (MOA) regarding financing, roles and responsibilities with respect to the dog park. The Department shall have primary financial responsibility for constructing and maintaining the park, and the dog park group shall have primary responsibility for daily management of the park.

733 DOG PARKS: SITE GUIDELINES AND SPECIFICATIONS

733.1 A dog park shall be no less than five thousand square feet (5,000 sq. ft.) in area where feasible, unless parkland availability in certain neighborhoods precludes meeting this guideline. Triangle parks or other areas of less than five thousand square feet (5,000 sq. ft.) may be considered.

733.2 Best management practices shall be implemented wherever feasible to preserve the surrounding environment. A dog park shall be established according to the following environmental guidelines:

(a) A dog park shall be located on well-drained land to prevent soil erosion with a maximum slope of 20%;

(b) A dog park shall sit at least 50 feet from surface waters that drain into the Potomac and Anacostia Rivers and Rock Creek;

(c) A dog park shall be located near a water supply line for drinking-fountain and maintenance purposes; and

(d) A dog park shall have a surface type that allows for positive drainage away from the site and that helps mitigate waste management issues.

733.3 A dog park shall comply with all codes and regulations as they apply to the Americans with Disabilities Act of 1990, the Clean Water Act (Federal Water Pollution Control Act of 1972), the D.C. Water Pollution Control Act of 1984, and DPR Standards.

733.4 A dog park shall be established on under-utilized land where possible. If such land is not available in a neighborhood where there is a demonstrated need for a dog park, the Director may consider other options about park space, including but not limited to time-sharing arrangements with other park users.

733.5 The Director shall not approve sites deemed unsuitable for dog parks, which shall be determined on a case-by case basis and may include:

(a) Areas designated specifically as playgrounds or children's play areas;

(b) Athletic fields and courts;

(c) Sensitive habitat areas or wildlife areas determined by the District Department of the Environment (DDOE); and

(d) Areas directly upslope from a community garden.

733.6 Each dog park shall have permanent signs, posted in English and Spanish, stating the hours of operation, rules, and regulations for the dog park, and contact information for the Department.

734 DOG PARKS: COMPLAINTS AND ENFORCEMENT

734.1 All complaints or concerns regarding a specific dog park shall be directed to the sponsoring dog park group for resolution. If, after thirty (30) days, the complaint or concern has not been resolved satisfactorily by the sponsor, the complainant and sponsor shall meet with the Director or his or her designee to mediate a solution.

734.2 If the Department or the sponsoring dog park group determines that a dog park is not being managed or maintained properly, potential solutions shall be developed and agreed upon by all parties. Failure to implement the solutions may result in revocation of the dog park group's sponsorship and temporary or permanent closure of the dog park by the Director.

734.3 Sponsoring dog park groups are primarily responsible for enforcement of the operating rules, but may seek the assistance and authority of the Department or other appropriate agencies of the District of Columbia.

735 DOG PARKS: OPERATING RULES

735.1 Each dog park shall have a carrying capacity of one dog per 450 square feet, and the number of dogs allowed in the dog park at any one time shall be posted. Handlers are expected to enforce the carrying capacity to prevent conflicts due to overcrowding and detriment to the environment. When carrying capacity is reached, handlers shall limit their stay to thirty (30) minutes when others are waiting.

735.2 Each handler shall comply with all animal control, dangerous dog and communicable disease laws and regulations before entering a dog exercise area with a dog.

735.3 A handler shall be sixteen (16) years of age or older.

735.4 A child under sixteen (16) years of age may enter a dog park only when accompanied and supervised by an adult.

735.5 A handler shall ensure that each dog within his or her control is wearing a current vaccination and registration tag in a dog park, as well as a current dog park registration tag obtained from the Department of Health Animal Control Division.

735.6 A handler shall leash each dog within his or her control until entering and upon exiting the dog park. To prevent conflicts, a handler shall keep his or her dog off-leash in the dog park, unless no other dogs are present.

735.7 A handler shall collect and bag all solid waste from his or her dog and dispose of it in the designated on-site receptacle in the dog park.

735.8 A handler shall accompany, maintain visual contact, and have voice control over his or her dog(s) at all times.

735.9 A handler shall not have more than three (3) dogs in a dog park at any one time.

735.10 A handler shall not have a dog that is less than four (4) months old in a dog park.

735.11 A handler shall not have a female dog that is in heat in the dog park.

735.12 A handler shall not use a spike or choke collar on a dog in the dog park.

735.13 A handler shall immediately leash and remove from a dog park his or her aggressive dog.

735.14 A handler shall not have a dog designated as a dangerous dog or a potentially dangerous dog in the dog park.

735.15 A handler shall control excessive barking.

735.16 A handler shall report all animal bites to the Department of Health within twenty-four (24) hours in accordance with communicable disease laws.

Section 799 is amended by adding the following definitions:

Aggressive Dog – a dog whose behavior is characterized by unprovoked snarling, growling, or attack posture.

Dangerous Dog – as defined in Section 2 of the Dangerous Dog Amendment Act of 1988 (D.C. Law 7-176), a dog that has bitten or attacked a person or domestic animal without provocation; or, in a menacing manner, approaches without provocation any person or domestic animal as if to attack, or has demonstrated a propensity to attack without provocation or otherwise to endanger the safety of human beings or domestic animals.

Department – the Department of Parks and Recreation.

Director - the Director of the Department of Parks and Recreation.

District - the District of Columbia.

Dog Park – also known as a dog exercise area; area within District-owned property designated for dog exercise where dogs are allowed off-leash without being considered at-large.

Dog Park Group – identifiable non-profit or community group, such as an official dog group, Park Partner or Friends of Group, who applies to sponsor a dog park and shares responsibilities with the Department of Parks and Recreation in park operations and management.

Dog Park Registration Tag – Positive District of Columbia government issued identification that must be worn at all times by each dog using a dog park.

Handler - a person in control of a dog who is personally and legally responsible for the dog at all times while using a dog park.

Maintenance – The activities required to ensure that the dog park is in a state of repair and efficiency at all times as more clearly defined in DPR Dog Park Standards.

Management – The day to day oversight of the dog park to insure that all posted rules and DPR Standards are adhered to.

Enforcement – The activities required to ensure that General Provisions and Operating Rules provided herein, and DPR standards are adhered to.

Potentially Dangerous Dog - a dog that poses a threat to public safety by causing an injury to a person or domestic animal without provocation that is less severe than a serious injury, engaging in encouraged dog fighting, or running at large three (3) or more times within any 12-month period.

Sensitive Habitat Area– an area highly prone to erosion or the natural habitat of locally important, rare, threatened or endangered species of plan or wildlife as determined by the District Department of the Environment (DDOE).

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 06-23A
Z.C. Case No. 06-23
(Text Amendments – 11 DCMR)
(Eating Establishment Definitions)
July 30, 2007

The Zoning Commission for the District of Columbia (the "Commission"), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01), having held a public hearing and referred the proposed amendments to the National Capital Planning Commission ("NCPC") for a 30-day period of review pursuant to § 492 of the District of Columbia Charter, hereby gives notice of the adoption of amendments to Chapters 1, 6, 7, 8, 9, 13, 14, 17, 18, 19, and 31 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations ("DCMR")). The amendments revise the definition of "restaurant," change the name of the "fast food restaurant" use to "fast food establishment," include criteria within the definition of "fast food establishment" that can be readily determined as being satisfied or not as part of the Zoning Administrator's review of building permit plans, and recognize a new use, to be called a "prepared food shop." The Commission took final action to adopt the amendments at a public meeting held on July 30, 2007.

This final rulemaking is effective upon publication in the *D.C. Register*.

This notice is necessary to correct a codification error in the text of the final Order published in the *D.C. Register* ("*DCR*") on September 28, 2007 at 54 *DCR* 9393. The Order wrongly indicated that the maximum number of seats allowed as a matter-of-right in a "prepared food shop" in a C-2-A Zone District is twelve, when it should have stated that the number is eighteen (and a prepared food shop having more than eighteen seats shall be permitted if approved as a special exception). The corrected text is found in the new § 721.3(t). No other changes to the text were made.

Existing Regulations

Since 1986, the Zoning Regulations have distinguished between restaurants and fast food restaurants by defining "restaurant" and "restaurant, fast food" separately, and treating the fast food use more restrictively. Restaurants are allowed as a matter-of-right in all C Districts. Fast food restaurants are prohibited in the C-1 District, require special exception approval in the C-2-

A District, and have additional requirements for matter-of-right approval in the C-2-B and C-2-C Districts.

The current means of distinguishing fast food restaurants has largely become outdated. The definitions distinguish "restaurants" from "restaurants, fast food" by means of calculations in the fast food definition regarding queuing area, pre-prepared food, and disposable tableware. The ever-evolving business model in the restaurant industry allows for increasing flexibility in layout, service style, and food preparation. This has led to cases where establishments considered fast food restaurants by the Advisory Neighborhood Commission ("ANC") were granted matter-of-right approval in the C-2-A District by the Department of Consumer and Regulatory Affairs ("DCRA") because they did not fall within the existing definition of "restaurant, fast food."

Description of Text Amendments

The proposed amendments would revise the definition of "restaurant," change the name of the "restaurant, fast food" use to "fast food establishment," include criteria within the definition of "fast food establishment" that can be readily determined as being satisfied or not as part of the Zoning Administrator's review of building permit plans, and recognize a new use, called a "prepared food shop."

Relationship to the Comprehensive Plan

The amendments are not inconsistent with the goals of the District Elements of the Comprehensive Plan for the National Capital and are consistent with §§ LU 2.3-A and LU 2.4 B which advocate changing the Zoning Regulations to better govern commercial uses and protect residential neighborhoods. The proposed changes further the goals of comprehensive plan by providing clarity in land use designations and facilitating easier enforceability in the regulations.

Public Hearing and Proposed Action

This rulemaking was initiated by petition filed by ANC 6A dated May 12, 2006 that included suggested text. The Commission set down the case for public hearing at its meeting of October 16, 2006, and authorized the Office of Planning ("OP") and the Office of the Attorney General to revise the text as needed to clarify the intent of the proposal. A somewhat revised text was shared with representatives of the Petitioner, who agreed with most of the modifications proposed. The Commission held a public hearing on April 19, 2007. At this meeting, several parties suggested various changes to the text, including changes to the definitions of "fast food establishment" and "prepared food shop." The Commission requested OP to compile and address all of the written and oral comments prior to proposed action. In a report dated May 23, 2007, OP addressed 13 separate comments on the advertised text and made several minor changes to address them. These changes include removal of the term "cooking," increase in the

number of seats allowed in a matter-of-right prepared food shop, and provide flexibility in the special exception provisions for fast food establishments.

The Commission took proposed action on June 11, 2007 to approve the text as amended in the Office of Planning supplemental report. A Notice of Proposed Rulemaking was published in the *D.C. Register* on June 22, 2007, at 54 *DCR* 6093, for a 30-day notice and comment period.

No comments were received.

The proposed rulemaking was also referred to the NCPC pursuant to § 492 of the District of Columbia Charter. NCPC, by report dated June 29, 2007, found that the proposed text amendments would not adversely affect the federal interests nor be inconsistent with the Federal Elements of the Comprehensive Plan.

The Office of the Attorney General has determined that this rulemaking meets its standards of legal sufficiency.

Final Action

The Commission took final action to adopt the rulemaking at its regularly scheduled public meeting on July 30, 2007. The Commission supports the amendments proposed by OP to address public comments on the advertised text.

The Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to the Zoning Regulations, Title 11 DCMR. Added wording is in **bold** and underlined, and deleted wording is shown in ~~strikethrough~~ lettering, except for Part D, which is all new text and therefore not annotated:

1. Section 199, Definitions, § 199.1, is amended as follows:

   (a) Insert the following new definitions in alphabetical order:

   Fast food establishment - a place of business, other than a "prepared food shop," where food is prepared on the premises and sold to customers for consumption and at least one of the following conditions apply:

   (a) The premises include a drive-through;

(b) Customers pay for the food before it is consumed. One characteristic that would satisfy this element would be building permit plans that depict a service counter without seating unless the applicant certifies that the intended principal use is for a restaurant or grocery and that the counter is part of a carry out service that is clearly subordinate to that principal use; or

(c) Food is served on/in anything other than non-disposable tableware. Characteristics that would satisfy this element include, but are not limited to: the building permit plans do not depict a dishwasher or do depict trash receptacles in public areas.

A proposed or existing establishment meeting this definition shall not be deemed to constitute any other use permitted under the authority of these regulations, except that a restaurant, grocery store, movie theater, or other use providing carryout service that is clearly subordinate to its principal use shall not be deemed a fast-food establishment.

Prepared food – food that is assembled, but not heated by means other than microwave or toaster, on the premises of a prepared food shop.

Prepared food shop - a place of business that offers seating or carry out service, or both, and which is principally devoted to the sale of prepared food, non-alcoholic beverages, or cold refreshments. This term includes an establishment known as a sandwich shop, coffee shop, or an ice cream parlor.

(b) Delete the definition "Restaurant, fast food."

(c) Amend the definitions of "Drive-through", "Food delivery service," and "Restaurant" to read as follows:

Drive-through - a system designed to permit customers of a ~~restaurant~~, fast food **establishment** ~~restaurant~~, bank, dry cleaning or other establishment to obtain goods or services by driving through the property and conducting the transaction while the customer remains within a motor vehicle. The system has two (2) major parts: a vehicular queuing lane or lanes, and one (1) or more service locations where customers place orders or receive services or both. No part of this definition shall be construed to apply to a gasoline service station.

Food delivery service - a restaurant, ~~delicatessen~~ **prepared food shop**, or fast food **establishment,** ~~restaurant~~ in which the principal use is production ~~delivery~~ of prepared food for delivery ~~by motor vehicle~~ to customers located off the business premises. Seating and tables for customers may or may not be provided

for on-premises consumption, but if present are clearly subordinate to the principal use of preparing food for delivery ~~delivering prepared food~~ to off-site customers. Any establishment that derives more than seventy-five percent (75%) of its sales from delivery orders will be considered a food delivery service in all cases. This definition does not include catering establishments.

Restaurant - a place of business **that does not meet the definition of a "fast food establishment" or "prepared food shop,"** where food, drinks or refreshments are prepared on the premises and sold to customers primarily for consumption on the premises. ~~This term shall include but not be limited to an establishment known as a café, lunch counter, cafeteria, or other similar business, but shall not include a fast food restaurant. In a restaurant, a~~ Any facilities for carryout shall be clearly subordinate to the principal use of providing prepared foods for consumption on the premises.

2. Section 601, Uses as a Matter of Right (CR), § 601.1(i), is amended to read as follows:

(i) Private club, restaurant, **prepared food shop**, fast food ~~restaurant~~ **establishment**, or food delivery service, provided a fast food ~~restaurant~~ establishment~~,~~ or food delivery service shall not include a drive-through;

3. Chapter 7, COMMERCIAL DISTRICTS, is amended as follows:

(a) Section 701, Uses as a Matter of Right (C-1), is amended as follows:

(i) By amending § 701.4 (q) to read as follows:

(q) Restaurant, but not including a fast food ~~restaurant~~ **establishment**, ~~a drive-in restaurant,~~ or a food delivery service.

(ii) By Adding a new § 701.4 (aa) to read as follows:

(aa) Prepared food shop, with no more than 18 seats for patrons and no drive-through.

(b) Section 704, Special Exceptions: General (C-1), § 704.1, is amended to read as follows:

704.1 The following uses as specified in §§ 706 through ~~711~~ **712** shall be permitted as special exceptions in a C-1 District if approved by the Board of Zoning Adjustment under § 3104.

(c) By adding a new § 712 to read as follows:

712 PREPARED FOOD SHOP

712.1 A Prepared Food Shop with more than eighteen seats for patrons shall be permitted in a C-1 District as a special exception if approved by the Board of Zoning Adjustment under § 3104 provided that no drive-through shall be permitted.

(d) Section 721, Uses as a Matter of Right (C-2), is amended as follows:

(i) Subsection 721.3 (s) is amended by striking the phrase "fast food restaurant" and inserting the phrase "fast food establishment" in its place.

(ii) By adding a new § 721.3 (t) to read as follows:

(t) Prepared food shop, except that in a C-2-A District, a prepared food shop with greater than eighteen seats for patrons shall be only be permitted by special exception pursuant to 11 DCMR 712.

(e) Section 733, Fast Food Restaurants in C-2-A Districts is amended as follows:

(i) By striking the phrase "fast food restaurant" wherever it appears and inserting the phrase "fast food establishment" in its place.

(ii) By adding a new § 733.12 to read as follows

733.12 An applicant for special exception under this section may request the Board to modify the conditions enumerated in §§ 733.2 through 733.4; provided that the general purposes and intent of this section are complied with.

(f) Sections 741.3 (c) and 743.4 are amended by striking the phrase "fast food restaurant" wherever it appears and inserting the phrase "fast food establishment" in its place.

(g) Subsections 742.4, 752.4, and 761.6 are amended by striking the phrase "fast food restaurant, delicatessen, or carryout" and inserting the phrase "fast food establishment" in its place.

4. Chapter 8, INDUSTRIAL DISTRICTS, §§ 801.10 and 821.5 are amended by striking the phrase "fast food restaurant, delicatessen, or carryout" and inserting the phrase "fast food establishment" in its place.

5. Chapter 9, WATERFRONT DISTRICTS, Section 901, Uses as a Matter of Right (W), § 901.1 (j), is amended to read as follows:

(j) Private club, restaurant, fast food ~~restaurant~~ **establishment**, **Prepared food shop,** or food delivery service, provided that a fast food ~~restaurant~~ **establishment**, or food delivery service shall not include a drive-through;

6. Chapter 13, NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT is amended as follows:

(a) Section 1302 Designated and Restricted Uses, § 1302.5, is amended to read as follows:

1302.5 Restaurants, fast food ~~restaurants~~ **establishments**, ~~delicatessens, carry-outs, and similar eating or drinking establishments~~ **and prepared food shops** shall be subject to the following limitations:

(b) Section 1307, Woodley Park Neighborhood Commercial Overlay District, § 1307.5, is amended to read as follows:

1307.5 No hotel, inn, or fast food ~~restaurant~~ **establishment** shall be permitted in the WP Overlay District.

(c) Section 1309, Eight Street Southeast Neighborhood Commercial Overlay District, § 1309.4, is amended to read as follows:

1309.4 For purposes of § 1302.5, restaurants, fast food ~~restaurants~~ **establishments**, ~~delicatessens, carry-outs, and similar eating or drinking establishments~~ **and prepared food shops**, shall be subject to the following limitations: these uses shall occupy no more than fifty percent (50%) of the linear street frontage within the ES Overlay District, as measured along the lots that face designated roadways in the ES Overlay District of which up to half (1/2) of the fifty percent (50%) of the linear street frontage shall only be occupied by fast food ~~restaurants~~**establishments**.

(d) Section 1320, H Street Northeast Neighborhood Commercial Overlay District (HS). § 1320.4(c), is amended to read as follows:

(c) Fast food ~~restaurant~~ **establishment** or food delivery service provided:

7. Chapter 14, REED-COOKE OVERLAY DISTRICT, Section 1401, Use Provisions, § 1401.1 (c) is amended to read as follows:

(c) Restaurant or fast food ~~restaurant~~ **establishment;**

8. Chapter 17, DOWNTOWN DEVELOPMENT OVERLAY DISTRICT, is amended as follows:

(a) Subsection 1703.3(b) is amended to read as follows:

1703.3 Each new or altered building that faces or abuts a public street shall devote all of the ground floor leasable space to the retail and service uses listed in § 1710 or the arts and arts-related uses listed in § 1711; provided:

...

(b) Not more than twenty percent (20%) of the required gross floor area on the ground floor shall be occupied by banks, loan offices, other financial institutions, travel agencies, or other transportation ticket offices, ~~delicatessens~~ **prepared food shops**, fast food ~~restaurants~~ **establishments**, printing or fast copy services, newsstands, dry cleaners, or any combination thereof;

(b) Subsections 1710.1 (v) and 1732.2 (ee), are amended by striking the phrase "fast food restaurant" where it appears and inserting the phrase "fast food establishment" in its place.

9. Chapter 18, SOUTHEAST FEDERAL CENTER OVERLAY DISTRICT, Section 1807.2 Preferred Uses, § 1807.2 (fff), is amended as follows:

(fff) Restaurant~~, not including drive-in or fast food~~;

10. Chapter 19, UPTOWN ARTS-MIXED USE (ARTS) OVERLAY DISTRICT, §1907.1 (o) is repealed.

11. CHAPTER 31, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, § 3104, Special Exceptions, is amended by adding the following to the list of special exceptions set forth in the table in § 3104.1.

TYPE OF SPECIAL EXCEPTION	ZONE DISTRICT	SECTIONS IN WHICH THE CONDITIONS ARE SPECIFIED
Prepared food shop with greater than eighteen seats for patrons	C-1, C-2-A	712

Vote of the Zoning Commission taken at its public meeting on June 11, 2007, to **APPROVE** the proposed rulemaking: **4-0-1** (Anthony J. Hood, John G. Parsons, Michael G. Turnbull, and Gregory N. Jefferies in favor, Carol J. Mitten, having not participated, not voting).

This Order was **ADOPTED** by the Zoning Commission at its public meeting on July 30, 2007, by a vote of **4-0-1** (Anthony J. Hood, Gregory N. Jefferies, John G. Parsons, and Michael G. Turnbull to adopt; Carol J. Mitten, having not participated, not voting).

This Corrected Order was **ADOPTED** by the Zoning Commission at its public meeting on October 15, 2007, by a vote of **4-0-1** (Anthony J. Hood, Michael G. Turnbull, Gregory N. Jeffries, and John G. Parsons, to adopt; Carol J. Mitten, having not participated, not voting).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is, on DEC - 7 2007.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 06-23A
Z.C. Case No. 06-23
(Text Amendments – 11 DCMR)
(Eating Establishment Definitions)

The full text of this Zoning Commission order is published in the "Final Rulemaking" section of this edition of the *D.C. Register*.